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27 *Attorneys for Defendant
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14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**

16 UNITED STATES OF AMERICA,

17 Case No.: 3:18-cr-00577-CRB

18 Plaintiff,

19 Judge: Hon. Charles Breyer

20 vs.

21 **DEFENDANT MICHAEL RICHARD
22 LYNCH'S MOTION FOR ADMISSION OF
23 FULL AUDIO RECORDING**

24 MICHAEL RICHARD LYNCH and
25 STEPHEN KEITH CHAMBERLAIN,

26 Court: Courtroom 6 – 17th Floor
27 Date Filed: May 19, 2024
28 Trial Date: March 18, 2024

1 **I. INTRODUCTION**

2 During the testimony of Joel Scott, Counsel for Dr. Lynch offered into evidence the full,
 3 58-minute audio recording of the phone call during which Scott explains to Brent Hogenson why
 4 he is firing him. At the time, the Court admitted into evidence the four-minute clip of the
 5 recording that was played for the jury (Exh. 8257.2), but deferred ruling on the admissibility of
 6 the recording of the full call (Exh. 8257). (TR 6754:4-9: “THE COURT: Well, I’m going to
 7 allow in 8257.2 at this point, and I’d like to discuss – discuss the other for a moment. MR.
 8 BAUM: Okay. THE COURT: I mean not right now, but, I mean, go ahead and play the portion
 9 that you want the jury to hear.”)

10 Even though the government has made the firing of Brent Hogenson one of the
 11 centerpieces of its case and called Joel Scott to testify about that event, the government has
 12 resisted having the full tape—the definitive record of why Mr. Scott fired Mr. Hogenson—in
 13 evidence. Counsel for the government has also suggested to defense counsel that admitting the
 14 full recording into evidence when it has not been played for the jury could constitute structural
 15 error, but there is no such risk when it is the defendant who offers the full audio tape into
 16 evidence.

17 Dr. Lynch asks the Court to admit the entire 58-minute tape in evidence.

19 **II. ARGUMENT**

21 In its case in chief, the government offered many hours of testimony about Brent
 22 Hogenson’s complaints about Autonomy, including direct testimony from Brent Hogenson,
 23 Ganesh Vaidyanathan, Percy Tejeda, Reena Prasad, and Joel Scott. The theme of this testimony
 24 has been that Autonomy fired Hogenson in retaliation for raising legitimate “whistleblower”
 25 complaints, and that Mike Lynch and his colleagues pressured Scott into firing Hogenson for
 26 improper reasons.

27 The tape recording of Scott firing Hogenson is important to rebut the charge that Lynch
 28 and his colleagues pressured Scott to fire Hogenson in retaliation for whistleblowing. Scott’s

1 tone and words on the recording make Scott's state of mind clear. The tape shows that Scott
 2 firmly believed that Hogenson deserved to be fired because Hogenson had made improper
 3 partner payments, failed to supervise his employees in the US Finance Department, and—most
 4 importantly—because he obstructed Scott's investigation into the payroll fraud, in direct
 5 contravention of Scott's orders. The emotion in Mr. Scott's voice—the frustration and the
 6 anger—are as important, if not more so, than the words themselves. That is why the transcripts
 7 alone (Exhs. A and B), are insufficient.

8 The full recording is important evidence in this case and it should be admitted. If the
 9 Court believes it is improper to admit the whole 58-minute recording because it wasn't played to
 10 the jury, the defense has no objection to playing it to the jury and is prepared to recall Mr. Scott
 11 in its own case if it is necessary to do so. The actual 58-minute recording of the call itself where
 12 Scott fired Hogenson is far more probative than the witness testimony the jury has heard to date
 13 from other people (Hogenson, Scott, Prasad, Vaidyanathan, Tejeda) speculating 14 years after
 14 the fact about what happened on that call.

15 Additionally, there is no basis for the government's concern that admitting the full tape
 16 when it wasn't played for the jury would cause structural error. In *United States v. Noushfar*, 78
 17 F.3d 1442 (9th Cir. 1996), the Ninth Circuit found structural error where the trial court, over
 18 defense objection, allowed the jury to take 14 tapes offered into evidence by the government into
 19 the jury room along with a tape player. Because the tapes had not been played in the defendant's
 20 presence in the courtroom, the Ninth Circuit found a "violation of Rule 43 and, possibly, the
 21 Confrontation Clause." *Id.* at 1445. No such concerns about a defendant's right to be present at
 22 every stage of the trial and to confront the evidence against him apply here, where it is the
 23 defendant who is the proponent of the evidence.

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1 **III. CONCLUSION**

2 For the foregoing reasons, Dr. Lynch asks the Court to admit the entire tape in evidence.

5 Dated: May 19, 2024

6 Respectfully submitted,

7 /s/ Jonathan M. Baum

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